

The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

EON-NET, L.P.,

Plaintiff,

v.

FLAGSTAR BANCORP,

Defendant.

**CASE NO. C05-2129 RSM**

**DECLARATION OF JEAN-MARC  
ZIMMERMAN IN SUPPORT OF  
PLAINTIFF EON-NET, L.P.'S  
MOTION FOR RECONSIDERATION  
OF THE ORDER ON MOTION FOR  
FEES AND COSTS**

**NOTE ON MOTION CALENDAR:  
JANUARY 18, 2010**

I, Jean-Marc Zimmerman, declare as follows:

1. I am an attorney-at-law licensed in the State of New Jersey and am counsel for Eon-Net, L.P. in the above-identified action.

2. My statement during the deposition of Mr. Mitchell that I discarded "the documents" received in the ReadSoft case from Millennium's prior counsel was a reference to having discarded public documents and other non essential documents, e.g., invoices for travel to San Diego, copy service invoices, etc., pertaining to that litigation.

5. I asked Eon-Net's prosecution counsel about the existence of the draft specification and other non-public prosecution-related documents and was advised that they did not have any.

6. I never sought to disclaim responsibility for the error in sending out the incorrect interrogatory response regarding the requisite level of skill in the art in the BCF case. Rather, I was simply attempting to explain the mechanics of how it happened.

I declare under the laws of the United States that the foregoing is true and correct.

Jean-Marc Zimmerman

Dated: January 16, 2010  
Westfield, New Jersey

## EXHIBIT 1

1 MEDINA

2 language in late fall 1990?

3 A. We were trying to enable a paperless  
4 office and we didn't want to be tied to paper.

5 So we anticipated that files that were  
6 created on a computer would ultimately come to  
7 be an object from which data was wanting to be  
8 extracted to feed the input process of an  
9 application.

10 Q. Do you remember anything else about  
11 why you added that language at that time? You  
12 don't have to, I just want to make sure we have  
13 your full recollection of that time.

14 A. I think that some -- you know, I think  
15 it is an adequate statement.

16 Q. Do you remember discussing that  
17 language with Ms. Elias?

18 A. No, I -- I know for a fact that I did  
19 not.

20 Q. Do you know whether any drafts of  
21 Ms. Elias' specification that she completed in  
22 1984 still exist?

23 A. I really don't know. The situation of  
24 Millenium and Eon-Net is as follows: I have  
25 moved around a lot. And in the process, all of

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2 my records of prior years are gone. I was  
3 divorced in -- or separated in 1999. I lost  
4 access to a lot of things at that time.

5 When I moved to Kenya in the year  
6 2000, more things were left behind. Now I  
7 have been locked out of Kenya, so certain  
8 things that might be in Kenya are not  
9 accessible to me.

10 And further, to be candid, as  
11 Millenium and Eon-Net have evolved into  
12 patent enforcement companies which are  
13 involved in the business of litigation. We  
14 have adopted a document retention policy  
15 which is that we don't retain any documents.  
16 So the only documents that exist are in the  
17 custody of my attorney.

18 Early on in the process, we selected  
19 some documents, put them in a couple of  
20 boxes. They were originally in the custody  
21 of the predecessor counsel to Jean-Marc  
22 Zimmerman and then were transferred to him.  
23 There may be in that box of documents a copy  
24 of the 1984 specification draft. I'm not  
25 sure. Whatever is there has been produced to



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2 you. There is no more.

3 Q. Who was Mr. Zimmerman's predecessor?

4 A. Jeffrey Schwab of Abelman, Frayne &  
5 Schwab.

6 Q. So in your position or Eon-Net's  
7 position --

8 A. Not a thing --

9 Q. Sorry, let me finish the question just  
10 for the record.

11 A. OK.

12 Q. Either in Eon-Net's possession or in  
13 your possession, there are no documents related  
14 to the actual process of inventing the invention  
15 in any of the patents at issue, is that correct?

16 A. Nothing beyond what's contained in  
17 those boxes which should have been and which I  
18 trust have been produced to you. That selection  
19 of documents was made in 1996 to the best of my  
20 recollection when Millenium started its --  
21 initiated its first lawsuit for the  
22 infringement, not of these patents, but of  
23 patent 1, the '855 patent.

24 MR. ZIMMERMAN: Can I clarify  
25 something here.

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2 MS. BAILY: Can you just let him  
3 finish his answer first.

4 MR. ZIMMERMAN: Sure.

5 A. Patent 2, the '508 patent, I think  
6 those were the only two that were in existence  
7 at that time. I seem to remember that patent 3  
8 issued after the lawsuit settled or -- and that  
9 the defendant subsequently took a supplementary  
10 license under patent 3. Patent 3 having been --  
11 being the '465 patent.

12 At the time of that litigation, the  
13 selection of documents was made. We had more  
14 records at that time, but that selection became  
15 our selection of what we thought was relevant to  
16 the document production requests that were given  
17 to us at that time, and nothing else survives.

18 MS. BAILY: Can I just finish this  
19 line of questions and then you can --

20 MR. ZIMMERMAN: Yeah, sure.

21 Q. When you say nothing else survives,  
22 were the other documents destroyed at that time  
23 or was it, as you said you have been moving  
24 around and documents were lost?

25 A. I've been moving around. I never

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2 deliberately took something and threw it in the  
3 incinerator. It just -- but it -- I don't have  
4 it anymore and I don't -- it is not buried  
5 someplace either. It just doesn't exist.

6 MR. ZIMMERMAN: I want to have a  
7 clarification. Jeffrey Schwab was prior  
8 litigation counsel, not prosecution counsel.  
9 Jeffrey Schwab's firm did not prosecute.

10 THE WITNESS: That's correct.

11 MR. ZIMMERMAN: The files, what was  
12 transferred to me were documents in  
13 connection with the litigation that I  
14 assumed and at the end of the litigation, we  
15 discarded the documents. The prosecution  
16 files were done by Foley & Lardner. To the  
17 best of my recollection, they have whatever  
18 prosecution files they have.

19 A. I know that Foley & Lardner's document  
20 retention process, policy, once a patent issues,  
21 they discard everything except, you know, what's  
22 in the file history.

23 MS. BAILY: Well, since you brought it  
24 up, did you contact the Foley & Lardner law  
25 firm --



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2 MR. ZIMMERMAN: I did. I spoke  
3 with -- I did it prior. But in response to  
4 your last thing to double-check, I also  
5 spoke with Blumenthal. David Blumenthal was  
6 the original attorney prosecuting the  
7 patents, but he is retired and it has  
8 subsequently been taken over by Glen Law.  
9 Glen Law confirmed for me that there is  
10 nothing responsive in the file histories or  
11 files that have any claim construction  
12 issues.

13 A. To amplify it further, Schwab quit in  
14 the middle of the case, not a first one, but a  
15 case that was pending Millenium case.

16 MR. ZIMMERMAN: In San Diego.

17 A. Zimmerman & Levi assumed the  
18 representation of Millenium in that case.  
19 Schwab transferred all the files he had over to  
20 Zimmerman & Levi.

21 MR. ZIMMERMAN: For that case.

22 A. And that was it.

23 Q. Now, after Mr. Lech brought up his  
24 initial idea to you and you guys had your  
25 initial discussion, you testified that you guys